



Deputy
Commissioner
Robert G. Nunes

In this Issue:

- [DLS Releases FY15 Strategic Plan](#)
- [Ask DLS](#)
- [Bureau of Accounts Announcements](#)
- [On Audit Engagements](#)
- [Register Now for "What's New in Municipal Law"](#)

Local Officials Directory

Municipal Calendar

IGR's & Bulletins

Workshops, Seminars & Events

What's New

DOR 360



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DLS Releases FY15 Strategic Plan

I'm pleased to announce that the Division of Local Services (DLS) has published our new FY15 Strategic Plan. You can view it by clicking [here](#).

The plan was developed after a series of roundtable meetings held at DLS offices in Springfield, Worcester and Boston, at which all staff participated. It aligns its 17 objectives with DOR's four goals in performance, internal capability, stakeholder satisfaction and quality.

Every DLS bureau - Executive, Legal, Bureau of Accounts, Bureau of Local Assessment, Municipal Data Management/Technical Assistance Bureau and Informational Technology - contributed to the plan.

The FY15 plan outlines eight initiatives DLS will actively pursue in FY15, including the pilot Taxpayer Assistance Program (TAP), a series of collaborations between various DLS bureaus and DLS Information Technology, the continuance of DLS' Professional Development Initiative, a review of DLS trainings and other public presentations, and the implementation of a new Applied Concepts in Municipal Finance Course designed for entry- to mid-level municipal staff.

The strategic planning process, which Governor Patrick initiated in his 2012 Executive Order on Performance Management, has been enormously helpful in providing a focus for improving performance and managing change in DLS.

Strategic Planning also fits with DOR Commissioner Amy Pitter's DOR360 policy to increase engagement and connection with DOR's stakeholders, and, in the case of DLS in particular, the local officials we

work with on a daily basis.

This new plan will continue to drive DLS forward in FY15. In some cases, it builds on objectives and initiatives outlined in the FY14 Strategic Plan. Each objective comes with a proposed measure to evaluate progress.

I truly believe that the process of empowering staff and listening to stakeholders has brought meaningful change and improvement to DLS. If you have further suggestions, I would like to hear from you at nunesr@dor.state.ma.us or by calling me at (617) 626-2381.

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Ask DLS

This month's *Ask DLS* features frequently asked questions regarding tax or payment in lieu of tax (PILOT) agreements with renewable energy companies. Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us. We would like to hear from you.

May a city or town enter into a tax or payment in lieu of tax (PILOT) agreement with a property owner regarding its solar or renewal energy system or facility?

Yes, if the owner of the solar or renewal energy system or facility is a generation company or wholesale generation company as defined in [MGL c. 164, sec. 1](#). That means the company must be in the business of producing, manufacturing or generating electricity for retail sale to the public or for sale at wholesale only.

Under the home rule amendment to the Massachusetts Constitution, cities and towns do not have the power to tax. [Massachusetts Constitutional Amendments Article 89, sec. 7](#). They may only assess, abate, exempt and collect taxes as expressly authorized by state law. There is only one statute, [MGL c. 59, sec. 38H\(b\)](#), that could authorize a tax agreement in connection with solar or renewal energy systems or facilities. That statute is a tax stability measure enacted as part of the 1997 law deregulating and restructuring the electric utility industry. It addressed the Legislature's concern that subjecting conventional power plants to market forces could result in significant devaluation or instability in values thereby causing shifts in the tax burden from the plants to homeowners and other business properties. [Chapter 164 of the Acts of 1997](#). It allows a city or town to enter into a tax or payment in lieu of tax (PILOT) agreement with an electric generation or

wholesale generation company for the purpose of meeting the company's annual property tax obligations. The amount paid remains as part of the tax base for purposes of determining the municipality's Proposition 2 1/2 levy ceiling and levy limit and of determining the minimum residential factor and allocation of the tax levy under property tax classification. See generally [Informational Guideline Release \(IGR\) No. 98-403, *Valuation and Taxation of Electric Generating Property*](#). The statute is still in effect and therefore, may be used as an alternative to regular property taxation but only if the owner of the solar or renewable energy system or facility is an electric generation or wholesale generation company.

Which city or town officer, board or committee may enter into a tax or PILOT agreement with an electric generation or wholesale generation company?

A tax or PILOT agreement requires approval of the municipality's legislative body. See Section I-A-2 of [IGR 98-403](#). As a general rule, a municipality acts through its legislative body unless a particular board or officer is authorized to act on its behalf. However, no board or officer is authorized by [MGL c. 59, sec. 38H\(b\)](#) to act on behalf of the city or town in entering into a tax or PILOT agreement with an electric generation company. This is notable because provisions of [MGL c. 38H\(b\) and \(c\)](#) authorized particular officials (assessors and selectboard) to enter into tax agreements with two specific power companies at the time of the 1997 law deregulating and restructuring the electric utility industry.

What is the maximum term for a tax or PILOT agreement?

There is no maximum term established by [MGL c. 59, sec. 38H\(b\)](#) for a tax or PILOT agreement with an electric generation company. The municipality should consider the useful life of the solar or renewable energy system or facility in negotiating a reasonable term for the agreement. See Section I-C of [IGR 98-403](#).

Does a tax or PILOT agreement with an electric generation company have to state the valuation of the solar or renewable energy system or facility to be used to determine the PILOT for each year of the agreement?

Agreements should fix the values, or provide formulas for determining the values, of the solar or renewable energy system or facility over the life of the agreement. See Section I-C of [IGR 98-403](#). The purpose of a PILOT agreement was to allow the parties to establish a valuation or valuation method for difficult to appraise special purpose power plants and avoid significant year to year swings in plant values while transitioning to the deregulation and restructuring of the electric utility industry. If an agreement specifies a dollar amount to be paid for each fiscal year, however, the assessors will have to convert that payment to a value for purposes of calculating the new growth increase in the levy

limit, the minimum residential factor under property tax classification and the tax rate. If an agreement specifies the payment dollar amount rather than a value, it should include the conversion formula.

Does a city or town need to have an expert appraisal of the solar or renewable energy property in order to negotiate a tax or PILOT agreement with an electric generation company? What documentation must the assessors provide during triennial certification for property subject to a PILOT agreement?

A formal appraisal by an outside consultant is not required. However, the assessors should develop initial projections of the fair cash valuations and tax payments of the solar or renewable energy system or facility, taking into account additions and retirements. The purpose of this documentation would be to assist the municipality in determining the advisability of entering into a tax or PILOT agreement with the electric generation company. See Section I-B of [IGR 98-403](#).

The assessors of a city or town that enters into a tax or PILOT agreement with an electric generation company must provide the Bureau of Local Assessment with a copy of the agreement, the legislative body's approval vote and any initial appraisal documentation. See Section III-C of [IGR 98-403](#).

For triennial certification, the assessors must update their property record cards to reflect the agreement values (or converted values). If the values (or converted values) change during an interim year, the property record cards must be updated accordingly as well.

May an electric generation company tax or PILOT agreement allow for new growth to be added to the municipality's levy limit over a number of years after the construction and installation of the solar or renewable energy system or facility?

No. Under [MGL c. 59, sec. 21C\(f\)](#), tax base growth is based on the increase in assessed valuation of a parcel of real property or an item of personal property over its prior year assessed valuation not attributable to revaluation. Therefore, the agreement "value" of the new real or personal property being "assessed" as part of the tax levy for the first fiscal year of the tax or PILOT agreement with the electric generation company is the basis for new growth in that year. In any subsequent fiscal year, only the agreement "value" of any *additional* new real property built or new personal property items installed by the company since the prior fiscal year and included in the year's PILOT payment would be growth. See Section IV-B of [IGR 98-403](#).

Municipalities should consider the impact of the structure of PILOT payments when negotiating an agreement with an electric generation company. Agreements that provide for smaller payments in the first years of the agreement and larger payments in later years may provide the company with greater flexibility in financing the installation. They

will also limit the new growth for the plant to the increase in "value" attributable to the installation in the first year of the agreement. Ordinarily, that will be less than the amount that would have been added to the municipality's levy limit than if the company was assessed a regular property tax.

How is an electric generation company PILOT treated for reporting of assessed valuations on Form LA-4 "Assessment/Classification Report" and calculating the minimum residential factor?

The assessors must report the agreement "value" for the year on Form LA-4 "Assessment/Classification Report" in the assessed valuation of Class 4, Industrial, real property (Class Code 452), or Personal Property (Class Code 552), as applicable, so that it is reflected in the fair cash value levy percentage for that class of real property or of personal property. Those percentages are used to calculate the minimum residential factor under [MGL c. 58, sec. 1A](#).

How is an electric generation company PILOT reported on the tax rate recapitulation?

The assessors must report the agreement "value" in the total assessed valuation of Class 4, Industrial, real property, or Personal Property, as applicable, on page 1 of the tax rate recapitulation so that the PILOT is part of the tax levy. [MGL c. 59, sec. 38H\(b\)](#). The PILOT *cannot* be reported on page 3 of the tax rate recap (or pro forma recap) as general fund estimated receipts.

How are any payments made by an electric generation company to the city or town in addition to the agreed PILOT reported on the tax rate recapitulation?

Any revenues received by the municipality from an electric generation company from the generated electricity sold to the grid through a Power Purchase Agreement (PPA), a lease of municipal property or any other contractual arrangement that is in addition to the PILOT and is being reported on the tax rate recap (or pro forma recap) must be reported on Page 3 as general fund estimated receipts under Miscellaneous Recurring.

How is an electric generation company PILOT billed? When are payments due? Is interest due on late payments?

Unless provided otherwise in the tax or PILOT agreement, the PILOT should be billed and collected in the same manner as property taxes. Under [MGL c. 59, sec. 38H\(b\)](#), the negotiated PILOT is treated as a property tax in some respects. Arguably, except for the manner by which the amount is determined, the PILOT would also be treated as a property tax for billing and collection purposes. Since [MGL c. 59, sec. 38H\(b\)](#) does not specifically address billing and collection, the better practice is to set out in the agreement how the PILOT will be billed,

when payments are due and the consequences of late payments, including collection remedies. The PILOTs may be due and payable on the same or different schedule, and in the same or different manner, as property taxes. However, the municipality should consider the impact of including the PILOT as part of the tax levy when negotiating the payment schedule. See Section I-C of [IGR 98-403](#).

Bureau of Accounts Announcements

Attention: Assessors, Auditors, Accountants, Mayors and Selectmen

The Division of Local Services has released the FY2015 EXCEL Tax Rate Recap, related forms and instructions. They can be found by using the following link:

[Recap](#)

This year's cover letter includes several important topics to consider when completing the FY2015 tax rate recap form including proper reporting of revenue from solar/wind power energy generating facilities, deficits in certain funds, enterprise indirect costs and Gateway submission.

Most Recap forms are submitted via the Gateway system. BOA and BLA suggest that forms be completed, printed, signed and filed locally (for audit purposes) as well. Forward to BOA or BLA only supporting documentation not entered into Gateway. Gateway can be found by clicking [here](#).

Attention: Auditors and Accountants

The Division of Local Services has released the FY2014 EXCEL Schedule A, related forms and instructions. They can be found by using the following link:

[Schedule A](#)

If you have not received information indicating that your community's FY2013 Schedule A has been approved, fund balance information on the EXCEL program will not be available. The downloadable program will be updated after the FY2013 Schedule A has been approved.

The Bureau of Accounts strongly encourages completion of the FY2014 Schedule A in Gateway. The form is substantially the same as in FY2013 and is due November 30, 2014.

On Audit Engagements

Tony Rassias - Bureau of Accounts Deputy Director

Local officials oftentimes contact the Bureau of Accounts for advice on engaging the services of an independent Certified Public Accounting (CPA) firm. Although the Bureau cannot recommend any one firm, it does recommend contacting the [Massachusetts Society of Certified Public Accountants](#) located in Boston to help local officials find the right CPA and/or CPA firm for the job.

For governments then, what types of audit engagements are there? Which ones are needed and how can they help? For answers to these questions and more, I spoke with Paul Gargano, Chairman of the Government Accounting and Auditing Committee of the Massachusetts Society of Certified Public Accountants, whose committee meets monthly to keep membership abreast of developments in governmental accounting and auditing. Paul has been a Massachusetts CPA for over 13 years and is a manager with Roselli, Clark & Associates.

Tony Rassias: Paul, from your experience, what are the most common engagement types that city, town and district officials request of Massachusetts CPA firms?

Paul Gargano: I would say that the most common engagements are financial statement audits, single audits, and agreed upon procedures.

TR: Could you explain a little about each?

PG: Financial statement audits are the most common type of engagement and are required by the [Single Audit Act](#) when a city, town or district is an issuer of more than \$10 million in debt securities or expends \$500,000 or more in federal financial assistance, which increases to \$750,000 for fiscal year 2016. An audit may also be required if there is a bylaw requiring such an engagement or as in Massachusetts' case regarding regional school districts, if a state law requires an annual audit.

A critical component of the financial statement audit is to evaluate the credit worthiness of the entity issuing debt securities. Companies that evaluate credit such as Standard and Poor's, Moody's and Fitch obtain financial statement audits to perform a comprehensive financial analysis of the entity to arrive at an investment grade which is then used by the financial market place to price the entity's debt securities.

Financial statement audits express an opinion as to whether the basic financial statements are presented fairly, in all material respects, in accordance with generally accepted accounting principles (GAAP). In addition, these audits include a report on the auditor's consideration of internal control over financial reporting in accordance with generally accepted governmental auditing standards (GAGAS). This report is

important as it discloses any material weaknesses or significant deficiencies that come to the auditor's attention during the audit.

TR: At the Bureau, most of the financial statement audits we review are pretty clean. Those that aren't certainly attract our attention. What about the other common engagement types?

PG: A single audit includes the entity's schedule of expenditures of federal awards and also reports on internal controls of federal award programs, and an opinion on compliance with laws and regulations of major grant programs. This report is used by the federal government to determine if the entity is in compliance with federal requirements.

Agreed upon procedures apply specific procedures on a subject matter that have been agreed upon with the client. A report is issued after the completion of the procedures that details the procedures performed and any related findings and conclusions.

TR: Along with the financial statement audit and single audit, the Bureau also receives a management letter. Could you explain the purpose of this letter?

PG: A management letter is not required as part of the audit. Most firms use the management letter as an opportunity to communicate ways to improve internal controls, financial policies and procedures. Financial officials and the public typically attach a great importance to a management letter since it usually includes critical comments about key areas of the financial operation and of the individuals who administer those key areas. Many critical decisions are made by financial officials based upon the results of this report.

TR: How do you suggest that local officials implement these results?

PG: Some communities have created an audit committee that oversees the audit process, including implementation of the results. In the absence of such a committee, I would recommend that the local officials create an implementation plan for the management letter comments and meet regularly during the year to assess progress.

TR: I think many people appreciate the management letter because it's written in plain language. But is the audit ever discussed at a public meeting?

PG: The results of the audit and the management letter should be discussed at an exit conference as a best practice. This exit conference is typically held at a public meeting of the board of selectmen or city council. Communities may prefer, however, to have the exit conference with the audit committee, finance committee or the local finance team.

TR: If I'm a taxpayer, not a regulator, a local official or financial

institution, what do all these reports do for me?

PG: I realize that most taxpayers are not versed in reading governmental financial statements. So for them, I'd say that a review of the financial statements by a competent and independent third-party should give them either a sense of confidence if their tax dollars are being handled properly or a sense of concern if their tax dollars are not.

For taxpayers who are interested in the financial statements, I would steer them toward the management's discussion and analysis found near the beginning of the report to gain a better understanding of how the entity is performing financially, in its own words.

Finally, I would recommend that taxpayers review the management letter to determine if key controls are operating as expected and to determine if key employees are performing their assigned duties in an adequate and efficient manner.

TR: Have audits and the audit process changed since 2000?

PG: Oh yes. These are the more significant changes:

1. The [Government Accounting Standards Board](#) (GASB) has been increasingly more active as the years pass and they don't seem to be slowing down, which continues to add complexity to audits;
2. [GASB Statement #34](#) introduced an entirely new reporting structure, especially significant in Massachusetts since fixed asset accounting was not required and many entities had to engage expensive consultants to inventory fixed assets;
3. [GASB Statements #43 and #45](#) caused entities to perform actuarial valuations for their post-employment benefit obligations (OPEBs);
4. Several new GASB statements will change the way pension liabilities are reported;
5. [Statement of Auditing Standards 99](#), or SAS 99, increased the auditor's focus on fraud and fraud risks;
6. New software and other technological developments have led to paperless audits and more efficient ways to analyze client financial data.

Audit costs for governments have increased significantly as a result of these changes, but reports have become much more transparent.

TR: Do you find that an auditor's services are being procured competitively?

PG: There is definitely a trend toward utilizing an RFP or RFQ. CPA services are exempt from Massachusetts General Law [Chapter 30B](#), the procurement law, but for services that only a CPA can perform. Financial statement audits, single audits and agreed upon procedure engagements fall under this exemption. Other CPA services, such as temporary accounting support, are not exempt.

TR: Agreed upon procedure engagements. Are there different types?

PG: There are actually several types. Agreed upon procedure engagements include review of the Department of Elementary and Secondary Education (DESE) End of Year Financial Reports, examination of the Student Activity Funds - accounts and procedures, and other departmental reviews and procedures.

For End of Year Financial Reports, DESE specifies the procedures that are to be performed and has recently issued audit guidelines for student activity funds, which can be performed either as an audit or as agreed upon procedures. Departmental reviews are more open-ended and entities are more involved in determining what procedures are performed such as cash handling and disbursement policies, compliance with laws and regulations, organizational efficiency and specific areas where problems have occurred in the past.

Agreed upon procedure engagements may also be performed when a fraud has occurred or if fraud is suspected. These engagements usually involve the auditor examining all transactions in the area that a suspected fraud has occurred. Extensive interviews are conducted with department heads and staff that may have information regarding the fraud. A detailed report is then issued to substantiate the fraud, if it has occurred. The report can then be used to further criminal charges or other disciplinary action if warranted.

They are an extremely effective way to help entities improve productivity and efficiency and quite often the future savings exceed the current cost. They are an engagement that must be performed by a CPA because they are considered an "attestation engagement," where a CPA expresses a conclusion regarding the reliability of an assertion made by the client.

TR: Paul, we know that some very small entities do not have an annual audit. The Division of Local Services encourages communities not subject to the Single Audit Act to fund an audit every two or three years. What is your advice to them?

PG: Certain entities that do not meet the requirements to have an audit still should have them periodically as a good business practice. I understand that many feel it's too costly, but oftentimes it's these entities that can benefit most from an audit. Many do not have full-time employees in key financial positions and as a result the financial

controls are lacking. A well performed audit will discover the areas where operational deficiencies are occurring, so they can be corrected before a major fraud occurs.

TR: What questions do financial officials ask you about audits?

PG: Financial officials usually want to know how well they have performed during the year. They ask how they compare to their peers, whether their reserves are adequate or their controls sufficient. They want to know where improvements could be made and how or where their weaknesses will impact them.

TR: Thank you for sharing your time and expertise and for providing me and all of our readers with great information!

PG: Thanks, Tony. It was great speaking with you!

Register Now for "What's New in Municipal Law"

The Division of Local Services Legal Staff will offer its annual seminar "What's New in Municipal Law" for local officials on Thursday, September 25, 2014 at The Log Cabin Banquet & Meeting House in Holyoke and Thursday, October 2, 2014 at The Lantana in Randolph.

The general session in the morning will review new legislation and recent court decisions pertaining to local government.

The afternoon session will consist of three concurrent workshops on the following topics: (1) qualification of charitable, religious and other non-profit organizations for local tax exemptions, (2) expenditures for public purposes and administration of trust funds, and (3) potential pitfalls when local officials or employees wear multiple hats.

Please click the following for the [agenda](#) and [registration form](#). Registrations must be received by Wednesday, September 17, 2014. Pre-registration is required.

If you have any questions about these seminars, please contact DLS Training Coordinator Donna Quinn at (617) 626-3838 or by email at dlsregistration@dor.state.ma.us.

August Municipal Calendar

August 1

Taxpayer

**Quarterly Tax Bills - Deadline
for Paying 1st Quarterly Tax**

		<p>Bill Without Interest</p> <p>According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 1st Quarter preliminary tax payment without interest, unless the preliminary bills were mailed after July 1. If mailed by August 1, the 1st Quarterly payment is due August 1, or 30 days after the bills were mailed, whichever is later, and the 2nd Quarterly payment is due November 1. If mailed after August 1, the preliminary tax is due as a single installment on November 1, or 30 days after the bills were mailed, whichever is later.</p>
August 1	Taxpayer	Annual Boat Excise Return Due
August 1	Accountant	<p>Notification of Total Receipts of Preceding Year</p> <p>The total actual local receipts (e.g., motor vehicle excise, fines, fees, water/sewer charges) of the previous fiscal year must be included on Schedule A of the Tax Rate Recapitulation Sheet (Recap) which is submitted by the Assessors to DOR. On the Recap, the Accountant certifies the previous fiscal year's actual revenues, and the Assessors use this information to project the next fiscal year's revenues. Any estimates of local receipts on the Recap that differ significantly from the previous year's actual receipts must be accompanied by documentation justifying the change in order to be approved by the Commissioner of Revenue.</p>

August 10	Assessors	Deadline for Appealing EQVs to ATB (even numbered years only)
August 10	Assessors	Deadline for Appealing SOL Valuations to ATB (every fourth year after 2005)
August 15	Assessors	Deadline to Vote to Seek Approval for Authorization to Issue Optional Preliminary Tax Bills For semi-annual communities issuing optional preliminary property tax bills, the Assessors must vote to seek authorization to issue the bills from DOR by this date. After receiving approval, Assessors must submit a Pro-forma Tax Rate Recap Sheet to DOR for review and issue the tax bills by October 1.
August 31	DOR/BOA	Issue Instructions for Determining Local and District Tax Rates A copy of the Tax Rate Recap Sheet and its instructions are forwarded to the community.
August 31	Assessors	Begin Work on Tax Rate Recapitulation Sheet (to set tax rate for semi-annual bills) Until the Tax Rate Recap Sheet is completed and certified by the Commissioner of Revenue, the community may not set a tax rate nor send out its property tax bills (unless it issues preliminary quarterly tax bills or requests from DOR the authority to send out preliminary tax notices if DOR requirements are met). Communities should begin gathering the information in enough time for the tax rate to

be set and tax bills mailed by October 1. The Tax Rate Recap Sheet provides Mayors or Selectmen with a ready-made financial management tool because the town's most important financial management information is summarized on this form. The Mayor or Selectmen should review the Recap Sheet in preliminary form in order to understand the following financial information:

Page 1 (Tax Rate Summary) -

The proposed tax levy should be compared to the levy limit. If a community does not levy to its limit, the remaining levy is referred to as excess levy capacity. Excess levy capacity is lost to the community for the current fiscal year although it will always remain in the levy limit calculation.

Page 2 (Amount To Be Raised) -

This section includes appropriations and other local expenditures not appropriated. These include overlay deficits, revenue deficits, state and county charges, Cherry Sheet offset items, and the allowance for abatements and exemptions. By comparing this information to the prior year(s), any significant changes can be determined.

Page 2 (Estimated Receipts & Revenues From Other Sources) -

In particular, Section C shows the amount appropriated from free cash and other available funds. By comparing the amounts appropriated to the balances in these accounts (available from

the Accountant/Auditor), the Mayor or Selectmen can get a sense of how their non-property tax revenues are being used.

Page 3, Schedule A (Local Receipts Not Allocated) - By comparing these figures to prior year(s), the Mayor or Selectmen can determine any changes in these revenues.

Page 4, Schedule B (Certification of Appropriations and Source of Funding) - This section includes financial votes of City/Town Council or Town Meeting not previously reported on last year's recap.

Final Day of Each Month

State Treasurer

Notification of monthly local aid distribution.

Click www.mass.gov/treasury/cash-management to view distribution breakdown.

To unsubscribe to City & Town and all other DLS Alerts, please click [here](#).